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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,676	04/02/2004	Aaron Lown	BUILT.P012	9707
28752	7590	09/14/2006	EXAMINER	
LACKENBACH SIEGEL, LLP LACKENBACH SIEGEL BUILDING 1 CHASE ROAD SCARSDALE, NY 10583			BUI, LUAN KIM	
		ART UNIT	PAPER NUMBER	
			3728	

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/816,676	LOWN ET AL.	
	Examiner Luan K. Bui	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12, 17, 18 and 20 is/are rejected.
- 7) Claim(s) 13-16 and 19 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/8/04 & 8/15/06.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 6, the phrase “the opening” lacks proper antecedent basis.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoover (4,696,403) in view of Cirone (6,004,033) and Carter (6,729,758). Hoover discloses a bag/tote (10) for carrying and transporting bottles comprising a front panel (12) defining a right side, a left side, a bottom and a top terminal edge, and a rear panel (14) defining a right side, a left side, a bottom and a top terminal edge. The rear panel secured to the front panel along at least the right side (16), the left side (16) and the bottom terminal edges (18) to define a pocket therebetween and the tote has a substantially flattened condition when no bottles is disposed in the pocket. Hoover further discloses a contact line (26) positioned between the right side terminal edges and the left side terminal edges to divide the pocket into a first pocket and a

second pocket. Hoover also discloses the other claimed limitations except for the front and rear panels being fabricated from an elastic, insulative, impact absorbent material such as neoprene. Cirone teaches a bottle holder (10) made from neoprene which is considered equivalent to an elastic, insulative, impact absorbent material for better protecting the bottle disposed within the holder during transportation and/or usage. Carter shows an insulated bag (1) comprising an inner layer (9) and an outer layer (7) formed from nylon material and a flexible insulating material (11) disposed between the inner and outer layers. The insulating material formed from neoprene (column 2, lines 8-17). It would have been obvious to one having ordinary skill in the art in view of Cirone and Carter to modify the tote of Hoover so the front and rear panels are made from neoprene which is considered equivalent to an elastic, insulative, impact absorbent material for better protecting the bottles during transportation.

As to claims 4 and 18, Carter shows the neoprene sandwiched between the layers of nylon.

5. Claims 12 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 11 above, and further in view of Hoffman (3,454,211) or Versluyts (6,921,203). The tote of Hoover as modified further fails to show the bottom terminal edges of each of the front and rear panels being scalloped. Hoffman shows a bag comprising a front panel (11) and a rear panel (12) secured to each other at a bottom edges defined by a sealing line (19, 21) in a form of a scalloped. Versluyts suggests a bag (10) having a scalloped bottom terminal edges (50). It would have been obvious to one having ordinary skill in the art in view of Hoffman or Versluyts to modify the tote of Hoover as modified so the bottom terminal edges of the front and rear panels is scalloped for decorative purposes and because the selection of the

specific shape for the bottom terminal edges would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well.

Allowable Subject Matter

6. Claims 13-16 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



lkb
September 12, 2006

Luan K. Bui
Primary Examiner
Art Unit 3728